

1 **Rule 1. General provisions.**

2 (a) Scope of rules. These rules govern the procedure in the courts of the state of
3 Utah in all actions of a civil nature, whether cognizable at law or in equity, and in all
4 statutory proceedings, except as governed by other rules promulgated by this court or
5 enacted by the Legislature. They shall be liberally construed and applied to achieve the
6 just, speedy, and inexpensive determination of every action.

7 (b) Effective date. All laws in conflict with these rules are of no force or effect. These
8 rules govern all actions brought after they take effect and all further proceedings in
9 actions then pending. If, in the opinion of the court, applying a rule in an action pending
10 when the rule takes effect would not be feasible or would work injustice, the former
11 procedure applies.

12 Advisory Committee Notes

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1 **Rule 3. Commencement of action.**

2 (a) How commenced. A civil action is commenced by filing a complaint with the
3 court. The court has jurisdiction from the time the complaint is filed.

4 (b) Payment dishonored. If a check or other form of payment tendered as a filing fee
5 is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after
6 notification by the court. Dishonor of a check or other form of payment does not affect
7 the validity of the filing, but may be grounds for such sanctions as the court deems
8 appropriate, which may include dismissal of the action and the award of costs and
9 attorney fees.

10 Advisory Committee Notes

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1 **Rule 4. Process.**

2 (a) Signing of summons. The summons shall be signed and issued by the Clerk of
3 Court or the plaintiff's attorney. Separate summonses may be signed.

4 (b)(i) Service. The summons and a copy of the complaint shall be served no later
5 than 120 days after the complaint is filed unless the court allows a longer period of time
6 for good cause. If the summons and complaint are not timely served, the action shall be
7 dismissed without prejudice on application of any party or upon the court's own initiative.

8 (b)(ii) In an action against two or more defendants, if service has been timely made
9 upon one of them,

10 (b)(ii)(A) the plaintiff may proceed against those served, and

11 (b)(ii)(B) the others may be served or appear at any time before trial.

12 (c) Contents of summons.

13 (c)(1) The summons shall contain the name of the court, the address of the court,
14 the names of the parties to the action, and the county in which it is brought. It shall be
15 directed to the defendant, state the name, address and telephone number of the
16 plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It
17 shall state the time within which the defendant must answer the complaint in writing,
18 and shall notify the defendant that judgment by default will be rendered against the
19 defendant for failure to answer the complaint in writing.

20 (c)(2) If service is made by publication of the summons without the complaint, the
21 summons shall briefly state the subject matter of the action, the relief demanded, and
22 that the complaint is on file with the court.

23 (d) Method of Service. Unless waived under paragraph (f), service of the summons
24 and complaint shall be by one of the following methods:

25 (d)(1) Personal service. The summons and complaint may be served in any state or
26 judicial district of the United States by the sheriff or constable or by the deputy of either,
27 by a United States Marshal or by the marshal's deputy, or by a person 18 years of age
28 or older at the time of service and not a party to the action or a party's attorney.
29 Personal service shall be made as follows:

30 (d)(1)(A) Upon any individual other than one covered by paragraphs (B), (C) or (D),
31 by delivering a copy of the summons and complaint to the individual personally, or by

32 delivering them to a person of suitable age and discretion residing at the individual's
33 dwelling or by delivering them to an agent authorized by appointment or by law to
34 receive service of process;

35 (d)(1)(B) Upon a minor, by delivering a copy of the summons and complaint to the
36 minor and to the minor's parent or guardian and the person having the care and control
37 of the minor, or with whom the minor resides;

38 (d)(1)(C) Upon a protected person judicially declared incapacitated, by delivering a
39 copy of the summons and complaint to the protected person and to the person's
40 guardian or conservator;

41 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the
42 state or any of its political subdivisions, by delivering a copy of the summons and
43 complaint to the person's guardian or conservator, if one has been appointed, or to the
44 person who has the care, custody, or control of the individual to be served, or to that
45 person's designee;

46 (d)(1)(E) Upon a corporation not otherwise provided for, upon a partnership or upon
47 an unincorporated association which is subject to suit under a common name, by
48 delivering a copy of the summons and complaint to an officer, a managing agent,
49 general agent, or other agent authorized by appointment or by law to receive service of
50 process and any other person required by statute to be served. If no such officer or
51 agent can be found within the state, and the defendant has an office or place of
52 business then upon the person in charge of such office or place of business;

53 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons
54 and complaint to the recorder;

55 (d)(1)(G) Upon a county, by delivering a copy of the summons and complaint to the
56 county clerk;

57 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the
58 summons and complaint to the superintendent or business administrator;

59 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons
60 and complaint to the president or secretary;

61 (d)(1)(J) Upon the state of Utah, by delivering a copy of the summons and complaint
62 to the attorney general and any other person or agency required by statute to be
63 served; and

64 (d)(1)(K) Upon a department or agency of the state of Utah, or upon any public
65 board, commission or body, by delivering a copy of the summons and complaint to any
66 member of its governing board, or to its executive employee or secretary.

67 (d)(1)(L) If the person to be served refuses to accept the summons and complaint,
68 the person serving the same shall state the name of the process and offer to deliver it.

69 (d)(2) Service by mail or commercial courier service.

70 (d)(2)(A) The summons and complaint may be served upon an individual other than
71 one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service
72 if the defendant signs a document indicating receipt.

73 (d)(2)(B) The summons and complaint may be served upon an entity covered by
74 paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service if the
75 defendant's agent signs a document indicating receipt.

76 (d)(2)(C) Service by mail or commercial courier service is complete on the date the
77 receipt is signed.

78 (d)(3) Service in a foreign country. Service of the summons and complaint in a
79 foreign country shall be made as follows:

80 (d)(3)(A) by any internationally agreed means reasonably calculated to give notice,
81 such as those means authorized by the Hague Convention on the Service Abroad of
82 Judicial and Extrajudicial Documents;

83 (d)(3)(B) if there is no internationally agreed means of service or the applicable
84 international agreement allows other means of service, provided that service is
85 reasonably calculated to give notice:

86 (d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in
87 that country in an action in any of its courts of general jurisdiction;

88 (d)(3)(B)(ii) as directed by the foreign authority in response to a letter of request; or

89 (d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the
90 individual personally or by any form of mail requiring a signed receipt, to be addressed
91 and dispatched by the clerk of the court to the party to be served; or

92 (d)(3)(C) by other means not prohibited by international agreement as may be
93 directed by the court.

94 (d)(4) Other service.

95 (d)(4)(A) If the person to be served cannot be served through reasonable diligence,
96 or if service upon all of the parties is impracticable under the circumstances, the party
97 seeking service may file a motion supported by affidavit requesting an order allowing
98 service by other means. The supporting affidavit shall set forth the efforts made to
99 identify, locate or serve the party or the circumstances which make it impracticable to
100 serve all of the parties.

101 (d)(4)(B) If the motion is granted, the court shall order service by other means
102 reasonably calculated under all the circumstances to notify the party of the action. The
103 order shall specify the content of the process to be served and the event that constitutes
104 completion of service.

105 (e) Proof of Service.

106 (e)(1) The person effecting service shall file proof with the court. The proof of service
107 must state the date, place, and manner of service. Proof of service made pursuant to
108 paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent. If
109 service is made by a person other than by an attorney, the sheriff or constable, or by the
110 deputy of either, by a United States Marshal or by the marshal's deputy, the proof of
111 service shall be made by affidavit.

112 (e)(2) Proof of service in a foreign country shall be made as provided in these rules,
113 or by the law of the foreign country, or by order of the court. Proof of service under
114 paragraph (d)(3)(B)(iii) shall include a receipt signed by the addressee or other
115 evidence of delivery to the addressee satisfactory to the court.

116 (e)(3) Failure to make proof of service does not affect the validity of the service. The
117 court may allow proof of service to be amended.

118 (f) Waiver of Service; Payment of Costs for Refusing to Waive.

119 (f)(1) A plaintiff may request a person other than a minor or a protected person to
120 waive service of the summons and complaint. The request to waive service and the
121 summons and complaint shall be mailed, e-mailed or delivered to the person upon
122 whom service is authorized under paragraph (d). The request shall allow the defendant

123 at least 21 days from the date on which the request is sent to return the waiver, or 28
124 days if addressed to a person outside of the United States, and shall be substantially in
125 the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set
126 forth in the Appendix of Forms attached to these rules.

127 (f)(2) A defendant who timely returns a waiver must respond to the complaint within
128 42 days after the date on which the request for waiver of service was mailed, e-mailed
129 or delivered, or 56 days after that date if addressed to a person outside of the United
130 States.

131 (f)(3) A defendant who waives service of the summons and complaint does not
132 thereby make any other waiver.

133 (f)(4) If a person refuses a request for waiver of service made according this rule, the
134 court shall impose upon the defendant the costs subsequently incurred in effecting
135 service.

136 Advisory Committee Notes

137

1 **Rule 8. General rules of pleadings.**

2 (a) Claims for relief. An original claim, counterclaim, cross-claim or third-party claim
3 shall contain in reasonable detail a simple, short and plain:

4 (a)(1) statement of the claim showing that the party is entitled to relief;

5 (a)(2) statement of the time, place, participants, and events; and

6 (a)(3) demand for judgment for specified relief. Relief in the alternative or of several
7 different types may be demanded.

8 (b) Defenses; form of denials. A party shall state in simple, short and plain terms any
9 defenses to each claim asserted and shall admit or deny the important statements in the
10 claim. A party without knowledge or information sufficient to form a belief about the truth
11 of a statement shall so state, and this has the effect of a denial. Denials shall fairly meet
12 the substance of the statements denied. A party may deny all of the statements in a
13 claim by general denial. A party may specify the statement or part of a statement that is
14 admitted and deny the rest. A party may specify the statement or part of a statement
15 that is denied and admit the rest.

16 (c) Affirmative defenses. An affirmative defense shall contain in reasonable detail a
17 simple, short and plain:

18 (c)(1) statement of the defense showing that the party avoids liability;

19 (c)(2) statement of the time, place, participants, and events; and

20 (c)(3) a demand for judgment for specified relief.

21 A party shall set forth affirmatively in a responsive pleading accord and satisfaction,
22 arbitration and award, assumption of risk, contributory negligence, discharge in
23 bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow
24 servant, laches, license, payment, release, res judicata, statute of frauds, statute of
25 limitations, waiver, and any other matter constituting an avoidance or affirmative
26 defense. If a party mistakenly designates a defense as a counterclaim or a counterclaim
27 as a defense, the court, on terms, may treat the pleadings as if the defense or
28 counterclaim had been properly designated.

29 (d) Effect of failure to deny. Statements in a pleading to which a responsive pleading
30 is required, other than statements of the amount of damage, are admitted if not denied

31 in the responsive pleading. Statements in a pleading to which no responsive pleading is
32 required or permitted are deemed denied or avoided.

33 (e) Consistency. A party may state a claim or defense alternately or hypothetically,
34 either in one count or defense or in separate counts or defenses. If statements are
35 made in the alternative and one of them is sufficient, the pleading is not made
36 insufficient by the insufficiency of an alternative statement. A party may state legal and
37 equitable claims or legal and equitable defenses regardless of consistency.

38 (f) Construction of pleadings. All pleadings shall be construed to do substantial
39 justice.

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1 **Rule 16. Pretrial conferences.**

2 (a) Pretrial conferences. The court, in its discretion or upon motion, may direct the
3 attorneys and the parties to appear for such purposes as:

4 (a)(1) expediting the disposition of the action;

5 (a)(2) establishing early and continuing control so that the case will not be protracted
6 for lack of management;

7 (a)(3) discouraging wasteful pretrial activities;

8 (a)(4) improving the quality of the trial through more thorough preparation;

9 (a)(5) facilitating the settlement of the case;

10 (a)(6) considering all matters as may aid in the disposition of the case;

11 (a)(7) establishing the time to join other parties and to amend the pleadings;

12 (a)(8) establishing the time to file motions;

13 (a)(9) establishing the time to complete discovery;

14 (a)(10) extending fact discovery;

15 (a)(11) the date for pretrial and final pretrial conferences and trial;

16 (a)(12) provisions for preservation, disclosure or discovery of electronically stored
17 information;

18 (a)(13) any agreements the parties reach for asserting claims of privilege or of
19 protection as trial-preparation material after production; and

20 (a)(14) any other appropriate matters.

21 (b) Unless an order sets the trial date, any party may and the plaintiff shall, at the
22 close of all discovery, certify to the court that the case is ready for trial. The court shall
23 schedule the trial as soon as mutually convenient to the court and parties. The court
24 shall notify parties of the trial date and of any final pretrial conference.

25 (c) Final pretrial conferences. The court, in its discretion or upon motion, may direct
26 the attorneys and the parties to appear for such purposes as settlement and trial
27 management. The conference shall be held as close to the time of trial as reasonable
28 under the circumstances.

29 (d) Sanctions. If a party or a party's attorney fails to obey an order, if a party or a
30 party's attorney fails to attend a conference, if a party or a party's attorney is
31 substantially unprepared to participate in a conference, or if a party or a party's attorney

32 fails to participate in good faith, the court, upon motion or its own initiative, may take any
33 action authorized by Rule 37(b)(2).

34 Advisory Committee Notes

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1 **Rule 26. General provisions governing disclosure and discovery.**

2 (a) Disclosure. This rule applies unless changed or supplemented by a rule
3 governing disclosure and discovery in a practice area.

4 (a)(1) Initial disclosures. Except in cases exempt under paragraph (a)(2), a party
5 shall, without waiting for a discovery request, provide to other parties:

6 (a)(1)(A) the name and, if known, the address and telephone number of:

7 (a)(1)(A)(i) each individual likely to have discoverable information supporting its
8 claims or defenses, unless solely for impeachment, identifying the subjects of the
9 information; and

10 (a)(1)(A)(ii) each fact witness the party may call in its case in chief, and a summary
11 of the expected testimony;

12 (a)(1)(B) a copy of all documents, data compilations, electronically stored
13 information, and tangible things in the possession or control of the party that the party
14 may offer in its case in chief;

15 (a)(1)(C) a computation of any damages claimed and a copy of all discoverable
16 documents or evidentiary material on which such computation is based, including
17 materials about the nature and extent of injuries suffered;

18 (a)(1)(D) a copy of any agreement under which any person may be liable to satisfy
19 part or all of a judgment or to indemnify or reimburse for payments made to satisfy the
20 judgment;

21 (a)(1)(E) a copy of all documents to which a party refers in its pleadings; and

22 (a)(1)(F) any statement or admission concerning the action or its subject matter
23 previously made by the party to whom disclosure is made.

24 (a)(1)(G) The disclosures required by paragraph (a)(1) shall be made:

25 (a)(1)(G)(i) by the plaintiff within 14 days after service of the first answer to the
26 complaint; and

27 (a)(1)(G)(ii) by the defendant within 28 days after the plaintiff's first disclosure or
28 after that defendant's appearance, whichever is later.

29 (a)(2) Exemptions.

30 (a)(2)(A) The requirements of paragraph (a)(1) do not apply to actions:

31 (a)(2)(A)(i) for judicial review of adjudicative proceedings or rule making proceedings
32 of an administrative agency;

33 (a)(2)(A)(ii) governed by Rule 65B or Rule 65C;

34 (a)(2)(A)(iii) to enforce an arbitration award;

35 (a)(2)(A)(iv) for water rights general adjudication under Title 73, Chapter 4.

36 (a)(2)(B) In an exempt action, the matters subject to disclosure are subject to
37 discovery.

38 (a)(3) Disclosure of expert testimony.

39 (a)(3)(A) A party shall, without waiting for a discovery request, provide to other
40 parties the identity of any person who may be used at trial to present evidence under
41 Rules 702, 703, or 705 of the Utah Rules of Evidence and a copy of a written report
42 prepared and signed by the witness or party. An expert witness may not testify in a
43 party's case-in-chief concerning any matter not contained in the report. The report shall
44 contain the subject matter on which the expert is expected to testify; the substance of
45 the facts and opinions to which the expert is expected to testify; a summary of the
46 grounds for each opinion; the qualifications of the witness, including a list of all
47 publications authored by the witness within the preceding ten years; the compensation
48 to be paid for the study and testimony; and a list of any other cases in which the witness
49 has testified as an expert at trial or by deposition within the preceding four years.

50 (a)(3)(B) Disclosure required by paragraph (a)(3) shall be made within 28 days after
51 the expiration of fact discovery as provided by paragraph (d) or, if the evidence is
52 intended solely to contradict evidence under paragraph (a)(3)(A), within 56 days after
53 disclosure by the other party.

54 (a)(4) Pretrial disclosures. A party shall, without waiting for a discovery request,
55 provide to other parties:

56 (a)(4)(A) the name and, if not previously provided, the address and telephone
57 number of each witness, unless solely for impeachment, separately identifying
58 witnesses the party will call and witnesses the party may call;

59 (a)(4)(B) the name of witnesses whose testimony is expected to be presented by
60 transcript of a deposition and a copy of the transcript; and

61 (a)(4)(C) identification of each exhibit, including summaries of other evidence, unless
62 solely for impeachment, separately identifying those which the party will offer and those
63 which the party may offer.

64 (A)(4)(D) Disclosure required by paragraph (a)(4) shall be made at least 28 days
65 before trial. At least 14 days before trial, a party shall serve and file objections and
66 grounds for the objections to the use of a deposition and to the admissibility of exhibits.
67 Other than objections under Rules 402 and 403 of the Utah Rules of Evidence,
68 objections not listed are waived unless excused by the court for good cause.

69 (b) Discovery scope.

70 (b)(1) In general. Parties may discover any matter, not privileged, which is relevant
71 to the claim or defense of any party, including the existence, description, nature,
72 custody, condition, and location of any books, documents, or other tangible things and
73 the identity and location of persons having knowledge of any discoverable matter. It is
74 not grounds for objection that the information sought will be inadmissible at the trial if
75 the information sought is relevant to the claim or defense of a party. For good cause,
76 the court may order discovery of any matter relevant to the subject matter of the action.
77 A party is not entitled to discover information merely because it appears calculated to
78 lead to the discovery of admissible evidence.

79 (b)(2) A party need not provide discovery of electronically stored information from
80 sources that the party identifies as not reasonably accessible because of undue burden
81 or cost. The party shall expressly make any claim that the source is not reasonably
82 accessible, describing the source, the nature and extent of the burden, the nature of the
83 information not provided, and any other information that will enable other parties to
84 evaluate the claim. On motion to compel discovery or for a protective order, the party
85 from whom discovery is sought must show that the information is not reasonably
86 accessible because of undue burden or cost. If that showing is made, the court may
87 order discovery from such sources if the requesting party shows good cause. The court
88 may specify conditions for the discovery.

89 (b)(3) Trial preparation materials. A party may discover discoverable documents and
90 tangible things prepared in anticipation of litigation or for trial by or for another party or
91 by or for that other party's representative (including the party's attorney, consultant,

92 surety, indemnitor, insurer, or agent) only upon a showing that the party seeking
93 discovery has substantial need of the materials to prepare the case and that the party is
94 unable without undue hardship to obtain substantially equivalent materials by other
95 means. In ordering discovery of such materials, the court shall protect against
96 disclosure of the mental impressions, conclusions, opinions, or legal theories of an
97 attorney or other representative of a party.

98 (b)(4) Statement previously made about the action. Upon request, a person not a
99 party may obtain a statement about the action or its subject matter previously made by
100 that person. If the request is refused, the person may move for a court order under Rule
101 37. A statement previously made is (A) a written statement signed or approved by the
102 person making it, or (B) a contemporaneously recorded oral statement by the person
103 making it or a transcript thereof.

104 (b)(5) Claims of Privilege or Protection of Trial Preparation Materials.

105 (b)(5)(A) Information withheld. If a party withholds discoverable information by
106 claiming that it is privileged or prepared in anticipation of litigation or for trial, the party
107 shall make the claim expressly and shall describe the nature of the documents,
108 communications, or things not produced in a manner that, without revealing the
109 information itself, will enable other parties to evaluate the claim.

110 (b)(5)(B) Information produced. If a party produces information that the party claims
111 is privileged or prepared in anticipation of litigation or for trial, the producing party may
112 notify any receiving party of the claim and the basis for it. After being notified, a
113 receiving party must promptly return, sequester, or destroy the specified information and
114 any copies it has and may not use or disclose the information until the claim is resolved.
115 A receiving party may promptly present the information to the court under seal for a
116 determination of the claim. If the receiving party disclosed the information before being
117 notified, it must take reasonable steps to retrieve it. The producing party must preserve
118 the information until the claim is resolved.

119 (c) Proportionality; protective orders.

120 (c)(1) Discovery must be proportional to the case. The court and parties may
121 allocate the costs, expenses and attorney fees of discovery to achieve proportionality.
122 The court and parties shall try to achieve proportionality considering:

- 123 (c)(1)(A) the amount in controversy;
124 (c)(1)(B) the complexity of the case;
125 (c)(1)(C) the importance of the issues;
126 (c)(1)(D) the importance of the information;
127 (c)(1)(E) the relevance of the information;
128 (c)(1)(F) the parties' relative access to the information;
129 (c)(1)(G) the discovery already had in the case;
130 (c)(1)(H) the expense of the discovery;
131 (c)(1)(I) the burden on the party requesting discovery;
132 (c)(1)(J) the burden on the party providing discovery;
133 (c)(1)(K) the needs of the case;
134 (c)(1)(L) whether the discovery limits allow a fair opportunity for the discovery of
135 discoverable information;
136 (c)(1)(M) whether the discovery is available from another source that is more
137 convenient, less burdensome, or less expensive;
138 (c)(1)(N) whether the discovery is cumulative of disclosures or other discovery;
139 (c)(1)(O) whether the party seeking discovery has had ample opportunity to discover
140 the information sought; and
141 (c)(1)(P) any other factor identified by the court.
142 (c)(2) A party or the person from whom discovery is sought may move for an order of
143 protection from discovery. The movant shall attach to the motion a copy of the request
144 for discovery or the response which is at issue and a certification that the movant has in
145 good faith conferred or attempted to confer with other affected parties to resolve the
146 dispute without court action. The court may make any order to protect a party or person
147 from discovery being conducted in bad faith or from annoyance, embarrassment,
148 oppression, or undue burden or expense, or to achieve proportionality, including one or
149 more of the following:
150 (c)(2)(A) that the discovery not be had;
151 (c)(2)(B) that the discovery may be had only on specified terms and conditions,
152 including a designation of the time or place;

153 (c)(2)(C) that a question about a statement or opinion of fact or the application of law
154 to fact not be answered until after designated discovery has been completed or until a
155 pretrial conference or other later time;

156 (c)(2)(D) that the discovery may be had only by a method of discovery other than
157 that selected by the party seeking discovery;

158 (c)(2)(E) that certain matters not be inquired into, or that the scope of the discovery
159 be limited to certain matters;

160 (c)(2)(F) that discovery be conducted with no one present except persons
161 designated by the court;

162 (c)(2)(G) that a deposition after being sealed be opened only by order of the court;

163 (c)(2)(H) that a trade secret or other confidential research, development, or
164 commercial information not be disclosed or be disclosed only in a designated way;

165 (c)(2)(I) that the costs, expenses and attorney fees of discovery be allocated among
166 the parties as ordered by the court; and

167 (c)(2)(J) that the parties simultaneously file specified documents or information
168 enclosed in sealed envelopes to be opened as directed by the court.

169 (c)(3) If the order terminates a deposition, it shall be resumed only upon the order of
170 the court in which the action is pending.

171 (c)(4) If the motion for a protective order is denied in whole or in part, the court may,
172 on such terms and conditions as are just, order that any party or person provide or
173 permit discovery. Rule 37(a)(4) applies to the award of expenses incurred in relation to
174 the motion.

175 (d) Sequence and timing of discovery.

176 (d)(1) Discovery shall be in two stages. Initial fact discovery shall be completed
177 within 150 days after the defendant's first disclosure is made and the parties shall follow
178 the limits established in Rules 30, 33, 34 and 36. Methods of discovery may be used in
179 any sequence and the fact that a party is conducting discovery shall not delay any other
180 party's discovery. Except for cases exempt under paragraph (a)(2), a party may not
181 seek discovery from any source before that party's initial disclosure obligations are
182 satisfied.

183 (d)(2) To obtain discovery beyond the limits established by these rules, a party shall
184 file:

185 (d)(2)(A) before the close of the initial fact discovery, a stipulated notice of extended
186 discovery and a statement signed by the parties and lawyers that the additional
187 discovery is necessary and proportionate and that each party has reviewed and
188 approved a discovery budget; or

189 (d)(2)(B) before the close of the initial fact discovery and after reaching the limits of
190 initial discovery imposed by these rules, a motion for extended discovery and a
191 statement signed by the party and lawyer that the additional discovery is necessary and
192 proportionate and that the party has reviewed and approved a discovery budget.

193 (e) Standard for disclosure or response; disclosure or response by an organization;
194 failure to disclose; initial and supplemental disclosures and responses.

195 (e)(1) A party shall make disclosures and responses to discovery based on the
196 information then known or reasonably available to the party.

197 (e)(2) If the party providing disclosure or responding to discovery is a corporation,
198 partnership, association, or governmental agency, the party shall act through one or
199 more officers, directors, managing agents, or other persons.

200 (e)(3) A party is not excused from making disclosures or responses because the
201 party has not completed investigating the case or because the party challenges the
202 sufficiency of another party's disclosures or responses or because another party has not
203 made disclosures or responses.

204 (e)(4) If a party fails to disclose or to timely supplement a disclosure or response to
205 discovery, that party may not use the undisclosed witness, document or material at any
206 hearing or trial unless the failure is harmless or the party shows good cause for the
207 failure.

208 (e)(5) If a party learns that a disclosure or response is incomplete or incorrect in
209 some important way, the party must timely provide the additional or correct information
210 if it has not been made known to the other parties. The supplemental disclosure or
211 response must state why the additional or correct information was not previously
212 provided.

213 (f) Signing discovery requests, responses, and objections. Every disclosure, request
214 for discovery, response to a request for discovery and objection to a request for
215 discovery shall be in writing and signed by at least one attorney of record or by the party
216 if the party is not represented. The signature of the attorney or party is a certification
217 under Rule 11. If a request or response is not signed, a party does not need to take any
218 action with respect to it. If a certification is made in violation of the rule, the court, upon
219 motion or upon its own initiative, may take any action authorized by Rule 11 or Rule
220 37(b)(2).

221 (g) Deposition in action pending in another state. Any party to an action in another
222 state may take the deposition of any person within this state in the same manner and
223 subject to the same conditions and limitations as if such action were pending in this
224 state. Notice of the deposition shall be filed with the clerk of the court of the county in
225 which the person whose deposition is to be taken resides or is to be served. Matters
226 required to be submitted to the court shall be submitted to the court in the county where
227 the deposition is being taken.

228 (h) Filing. Except as required by these rules or ordered by the court, a party shall not
229 file with the court a disclosure, a request for discovery or a response to a request for
230 discovery, but shall file only the certificate of service stating that the disclosure, request
231 for discovery or response has been served on the other parties and the date of service.

232 Advisory Committee Notes

233

234 Suggested by the Institute. Statement of concept only.

235 Rule 26B. Disclosure and discovery in personal injury actions.

236 In actions claiming damages for personal injuries, the claimant shall disclose the
237 names and addresses of health care providers who have provided care for the condition
238 for which damages are sought within five years prior to the date of injury, and shall
239 produce all records from those providers or shall provide a waiver allowing the opposing
240 party to obtain those records, subject to automatic protective provisions that restrict the
241 use of the materials to the instant litigation. The defending party shall provide copies of
242 all applicable insurance policies, and any insurance claims documents that address the
243 facts of the case.

244

245 Rule 26C. Disclosure and discovery in employment actions.

246 In actions seeking damages for loss of employment, the claimant shall disclose the
247 names and addresses of employers for five years prior to the date of disclosure, all
248 documents reflective of claimant's efforts to find employment following departure from
249 the defending party's employ; and written waivers allowing the defending party to obtain
250 the claimant's personnel files from each such employer, subject to automatic protective
251 provisions that restrict the use of the materials to the instant litigation. The defending
252 party shall produce the claimant's personnel files and all applicable personnel policies
253 and employee handbooks;

254

255 Rule 26D. Disclosure and discovery in nnnnn.

256

257

1 **Rule 26A. Disclosure in domestic relations actions.**

2 (a) Scope. This rule applies to domestic relations actions, including divorce,
3 temporary separation, separate maintenance, parentage and modification. This rule
4 does not apply to adoptions, enforcement of prior orders, cohabitant abuse protective
5 orders, child protective orders and civil stalking injunctions.

6 (b) Time for disclosure. Without waiting for a discovery request, petitioner in all
7 domestic relations actions shall disclose to respondent the documents required in this
8 rule within 40 days after service of the petition unless respondent defaults or consents
9 to entry of the decree. The respondent shall disclose to petitioner the documents
10 required in this rule within 40 days after respondent's answer is due.

11 (c) Financial Declaration. Each party shall disclose to all other parties a fully
12 completed court-approved Financial Declaration and attachments. Each party shall
13 attach to the Financial Declaration the following:

14 (c)(1) For every item and amount listed in the Financial Declaration, excluding
15 monthly expenses, the producing party shall attach copies of statements verifying the
16 amounts listed on the Financial Declaration that are reasonably available to the party.

17 (c)(2) All federal and state income tax returns filed by that party, on behalf of that
18 party, and any returns in which that party has a business, corporate, partnership or trust
19 interest including all W-2s, 1099s, K-1s and all supporting tax schedules for the two tax
20 years before the petition was filed.

21 (c)(3) Pay stubs and other evidence of all earned and un-earned income for the 12
22 months before the petition was filed.

23 (c)(4) All loan applications and financial statements prepared or used by the party
24 within the 12 months before the petition was filed.

25 (c)(5) Documents verifying the value of all real estate in which the party has an
26 interest, including, but not limited to, the most recent appraisal, tax valuation and
27 refinance documents.

28 (c)(6) All statements for the 3 months before the petition was filed for all financial
29 accounts, including, but not limited to checking, savings, money market funds,
30 certificates of deposit, brokerage, investment, retirement, regardless of whether the
31 account has been closed including those held in that party's name, jointly with another

32 person or entity, or as a trustee or guardian, or in someone else's name on that party's
33 behalf.

34 (c)(7) If the foregoing documents are not reasonably available or are in the
35 possession of the other party, the party disclosing the Financial Declaration shall
36 estimate the amounts entered on the Financial Declaration, the basis for the estimation
37 and an explanation why the documents are not available.

38 (d) Certificate of Service. Each party shall file a Certificate of Service with the court
39 certifying that he or she has provided the Financial Declaration and attachments to the
40 other party in compliance with this rule.

41 (e) Exempted agencies. Agencies of the State of Utah are not subject to these
42 disclosure requirements.

43 (f) Sanctions. Failure to fully disclose all assets and income in the Financial
44 Declaration and attachments may subject the non-disclosing party to sanctions under
45 Rule 37 including an award of non-disclosed assets to the other party, attorney's fees or
46 other sanctions deemed appropriate by the court.

47 (g) Failure of a party to comply with this rule does not preclude any other party from
48 obtaining a default judgment, proceeding with the case, or seeking other relief from the
49 court.

50 (h) Notice of the requirements of this rule shall be served on the Respondent and all
51 joined parties with the initial petition.

52 Advisory Committee Notes

53 (c)(3): Refer to statutory definition

1 **Rule 29. Stipulations regarding disclosure and discovery procedure.**

2 The parties may modify any provision of these rules for disclosure and discovery by
3 filing, before the close of the initial fact discovery, a stipulated notice of extended
4 discovery and a statement signed by the parties and lawyers that the additional
5 discovery is necessary and proportionate and that each party has reviewed and
6 approved a discovery budget. Stipulations extending the time for or limits of disclosure
7 or discovery require court approval if the extension would interfere with a court order for
8 completion of discovery or with the date of a hearing or trial.

9 Advisory Committee Notes

10

1 **Rule 30. Depositions.**

2 (a) When depositions may be taken; when leave required; no deposition of expert
3 witnesses. A party may depose a party or witness by oral or written questioning. A
4 witness may not be deposed more than once. A person who may present evidence
5 under Rules 702, 703, or 705 of the Utah Rules of Evidence may not be deposed.

6 (b) Notice of deposition; general requirements; special notice; non-stenographic
7 recording; production of documents and things; deposition of organization; deposition by
8 telephone; written questions.

9 (b)(1) The party deposing a witness shall give reasonable notice in writing to every
10 other party. The notice shall state the date, time and place for the deposition and the
11 name and address of each witness. If the name of a witness is not known, the notice
12 shall describe the witness sufficiently to identify the person or state the class or group to
13 which the person belongs. The notice shall designate any documents and tangible
14 things to be produced by a witness. The notice shall designate the officer who will
15 conduct the deposition.

16 (b)(2) The notice shall designate the method by which the deposition will be
17 recorded. With prior notice to the officer, witness and other parties, any party may
18 designate a recording method in addition to the method designated in the notice.
19 Depositions may be recorded by sound, sound-and-visual, or stenographic means, and
20 the party designating the recording method shall bear the cost of the recording. The
21 appearance or demeanor of witnesses or attorneys shall not be distorted through
22 recording techniques.

23 (b)(3) A deposition shall be conducted before an officer appointed or designated
24 under Rule 28 and shall begin with a statement on the record by the officer that includes
25 (A) the officer's name and business address; (B) the date, time and place of the
26 deposition; (C) the name of the witness; (D) the administration of the oath or affirmation
27 to the witness; and (E) an identification of all persons present. If the deposition is
28 recorded other than stenographically, the officer shall repeat items (A) through (C) at
29 the beginning of each unit of the recording medium. At the end of the deposition, the
30 officer shall state on the record that the deposition is complete and shall state any
31 stipulations.

32 (b)(4) The notice to a party witness may be accompanied by a request under Rule
33 34 for the production of documents and tangible things at the deposition. The procedure
34 of Rule 34 shall apply to the request. The attendance of a nonparty witness may be
35 compelled by subpoena under Rule 45. Documents and tangible things to be produced
36 shall be stated in the subpoena.

37 (b)(5) A party may name as the witness a corporation, a partnership, an association,
38 or a governmental agency, describe with reasonable particularity the matters on which
39 questioning is requested, and direct the organization to designate one or more officers,
40 directors, managing agents, or other persons to testify on its behalf. The organization
41 shall state, for each person designated, the matters on which the person will testify. A
42 subpoena shall advise a nonparty organization of its duty to make such a designation.

43 (b)(6) A deposition may be taken by remote electronic means. A deposition taken by
44 remote electronic means is considered to be taken at the place where the witness
45 answers questions.

46 (b)(7) A party taking a deposition using written question shall include the written
47 questions with the notice or subpoena and serve them on:

48 (b)(7)(A) the parties;

49 (b)(7)(B) the witness if that person is not a party; and

50 (b)(7)(C) the officer.

51 (b)(7)(D) Within 14 days after the questions are served, a party may serve cross
52 questions. Within 7 days after being served with cross questions, a party may serve
53 redirect questions. Within 7 days after being served with redirect questions, a party may
54 serve recross questions.

55 (b)(7)(E) The officer shall ask any written questions.

56 (c) Examination and cross-examination; objections.

57 (c)(1) Questioning of witnesses may proceed as permitted at the trial under the Utah
58 Rules of Evidence, except Rules 103 and 615.

59 (c)(2) All objections shall be recorded, but the questioning shall proceed, and the
60 testimony taken subject to the objections. Any objection shall be stated concisely and in
61 a non-argumentative and non-suggestive manner. A person may instruct a witness not
62 to answer only to preserve a privilege, to enforce a limitation on evidence directed by

63 the court, or to present a motion for a protective order under Rule 26(c). Upon demand
64 of the objecting party or witness, the deposition shall be suspended for the time
65 necessary to make a motion. The party taking the deposition may complete or adjourn
66 the deposition before moving for an order to compel discovery under Rule 37.

67 (d) Limits. During initial fact discovery, each side (plaintiffs collectively, defendants
68 collectively, and third-party defendants collectively) is limited to 20 hours of deposition
69 by oral questioning. Oral questioning of a nonparty shall not exceed four hours, and oral
70 questioning of a party shall not exceed seven hours. A deposition by written questioning
71 shall not cumulatively exceed 15 questions, including discrete subparts, by the plaintiffs
72 collectively, by the defendants collectively or by third-party defendants collectively.

73 (e) Submission to witness; changes; signing. Within 28 days after being notified by
74 the officer that the transcript or recording is available, a witness may sign a statement of
75 changes to the form or substance of the transcript or recording and the reasons for the
76 changes. The officer shall append any changes timely made by the witness.

77 (f) Record of deposition; certification and delivery by officer; exhibits; copies.

78 (f)(1) The officer shall record the deposition or direct another person present to
79 record the deposition. The officer shall sign a certificate, to accompany the record, that
80 the witness was under oath or affirmation and that the record is a true record of the
81 deposition. The officer shall keep a copy of the record. The officer shall securely seal
82 the record endorsed with the title of the action and marked "Deposition of (name). Do
83 not open." and shall promptly send the sealed record to the attorney or the party who
84 designated the recording method. An attorney or party receiving the record shall store it
85 under conditions that will protect it against loss, destruction, tampering, or deterioration.

86 (f)(2) Every party may inspect and copy documents and things produced for
87 inspection and must have a fair opportunity to compare copies and originals. Upon the
88 request of a party, documents and things produced for inspection shall be marked for
89 identification and added to the record. If the witness wants to retain the originals, that
90 person shall offer the originals to be copied, marked for identification and added to the
91 record.

92 (f)(3) Upon payment of reasonable charges, the officer shall furnish a copy of the
93 record to any party or to the witness. An official transcript of a recording made by non-
94 stenographic means shall be prepared under Utah Rule of Appellate Procedure 11(e).

95 (g) Failure to attend or to serve subpoena; expenses. If the party giving the notice of
96 a deposition fails to attend or fails to serve a subpoena upon a witness who fails to
97 attend, and another party attends in person or by attorney, the court may order the party
98 giving the notice to pay to the other party the reasonable costs, expenses and attorney
99 fees incurred.

100 Advisory Committee Notes

101

1 ~~Rule 31. Depositions upon written questions.~~

2 ~~(a) Serving questions; notice.~~

3 ~~(a)(1) A party may take the testimony of any person, including a party, by deposition~~
4 ~~upon written questions without leave of court except as provided in paragraph (2). an~~
5 ~~opposing yThe attendance of witnesses may be compelled by the use of subpoena as~~
6 ~~provided in Rule 45.~~

7 ~~(a)(2) A party must obtain leave of court, which shall be granted to the extent~~
8 ~~consistent with the principles stated in Rule 26(b)(2), if the person to be examined is~~
9 ~~confined in prison or if, without the written stipulation of the parties,~~

10 ~~(a)(2)(A) a proposed deposition would result in more than ten depositions being~~
11 ~~taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third party~~
12 ~~defendants;~~

13 ~~(a)(2)(B) the person to be examined has already been deposed in the case; or~~

14 ~~(a)(2)(C) a party seeks to take a deposition before the time specified in Rule 26(d).~~

15 ~~(a)(3) A party desiring to take a deposition upon written questions shall serve them~~
16 ~~upon every other party with a notice stating (1) the name and address of the person~~
17 ~~who is to answer them, if known, and if the name is not known, a general description~~
18 ~~sufficient to identify him or the particular class or group to which he belongs, and (2) the~~
19 ~~name or descriptive title and address of the officer before whom the deposition is to be~~
20 ~~taken. A deposition upon written questions may be taken of a public or private~~
21 ~~corporation or a partnership or association or governmental agency in accordance with~~
22 ~~the provisions of Rule 30(b)(6).~~

23 ~~(a)(4) Within 14 days after the notice and written questions are served, a party may~~
24 ~~serve cross questions upon all other parties. Within 7 days after being served with cross~~
25 ~~questions, a party may serve redirect questions upon all other parties. Within 7 days~~
26 ~~after being served with redirect questions, a party may serve recross questions upon all~~
27 ~~other parties. The court may for cause shown enlarge or shorten the time.~~

28 ~~(b) Officer to take responses and prepare record. A copy of the notice and copies of~~
29 ~~all questions served shall be delivered by the party taking the deposition to the officer~~
30 ~~designated in the notice, who shall proceed promptly, in the manner provided by Rule~~

31 ~~30(c), (e), and (f), attaching to the deposition the copy of the notice and the questions~~
32 ~~received.~~

33 ~~Advisory Committee Notes~~

34

1 **Rule 33. Written questions to parties.**

2 (a) Availability; procedures for use. During initial fact discovery, any party may serve
3 upon any other party up to 15 written questions, including all discrete subparts.

4 (b) Answers and objections. Each question shall be answered separately and fully in
5 writing under oath or affirmation unless it is objected to. If a question is objected to, the
6 party shall state the reasons for the objection. Any reason not stated is waived unless
7 excused by the court for good cause. The party shall answer any part of a question that
8 is not objectionable. A question is not objectionable merely because an answer involves
9 an opinion or argument that relates to fact or the application of law to fact. The
10 answering party shall serve the answers and objections within 28 days after service of
11 the questions.

12 (c) Scope; use at trial. Questions may relate to any discoverable matter. Answers
13 may be used as permitted by the Rules of Evidence.

14 (d) Option to produce business records. If the answer to a question may be found by
15 inspecting the answering party's business records, including electronically stored
16 information, and the burden of finding the answer is substantially the same for both
17 parties, the answering party may identify the records from which the answer may be
18 found. The answering party must give the asking party reasonable opportunity to
19 inspect the records and to make copies, compilations, or summaries. The answering
20 party must identify the records in sufficient detail to permit the asking party to locate and
21 to identify them as readily as the answering party.

22 Advisory Committee Notes

23

1 **Rule 34. Production of documents and things and entry upon land for**
2 **inspection and other purposes.**

3 (a) Scope.

4 (a)(1) Any party may serve on any other party a request to produce and permit the
5 requesting party to inspect, copy, test or sample any designated discoverable
6 documents, electronically stored information or tangible things (including writings,
7 drawings, graphs, charts, photographs, sound recordings, images, and other data or
8 data compilations stored in any medium from which information can be obtained,
9 translated, if necessary, by the respondent into reasonably usable form) in the
10 possession or control of the responding party .

11 (a)(2) Any party may serve on any other party a request to permit entry upon
12 designated property in the possession or control of the responding party for the purpose
13 of inspecting, measuring, surveying, photographing, testing, or sampling the property or
14 any designated discoverable object or operation on the property.

15 (b) Procedure and limitations.

16 (b)(1) The request shall identify the items to be inspected by individual item or by
17 category, and describe each item and category with reasonable particularity. During
18 initial fact discovery, the request shall not cumulatively include more than 25 distinct
19 items or categories of items. The request shall specify a reasonable date, time, place,
20 and manner of making the inspection and performing the related acts. The request may
21 specify the form or forms in which electronically stored information is to be produced.

22 (b)(2) The responding party shall serve a written response within 28 days after
23 service of the request. The response shall state, with respect to each item or category,
24 that inspection and related acts will be permitted as requested, or that the request is
25 objected to. If the party objects to a request, the party must state the reasons for the
26 objection. Any reason not stated is waived unless excused by the court for good cause.
27 The party shall identify and permit inspection of any part of a request that is not
28 objectionable. If the party objects to the requested form or forms for producing
29 electronically stored information -- or if no form was specified in the request -- the
30 responding party must state the form or forms it intends to use.

31 (c) Form of documents and electronically stored information.

32 (c)(1) A party who produces documents for inspection shall produce them as they
33 are kept in the usual course of business or shall organize and label them to correspond
34 with the categories in the request.

35 (c)(2) If a request does not specify the form or forms for producing electronically
36 stored information, a responding party must produce the information in a form or forms
37 in which it is ordinarily maintained or in a form or forms that are reasonably usable.

38 (c)(3) A party need not produce the same electronically stored information in more
39 than one form.

40 Advisory Committee Notes

41

1 **Rule 35. Physical and mental examination of persons.**

2 (a) Order for examination. When the mental or physical condition or attribute of a
3 party or of a person in the custody or control of a party is in controversy, the court may
4 order the party or person to submit to a physical or mental examination by a suitably
5 licensed or certified examiner or to produce for examination the person in the party's
6 custody or control, unless the party is unable to produce the person for examination.
7 The order may be made only on motion for good cause shown. All papers related to the
8 motion and notice of any hearing shall be served on a nonparty to be examined. The
9 order shall specify the time, place, manner, conditions, and scope of the examination
10 and the person by whom the examination is to be made. The person being examined
11 may record the examination unless the party requesting the examination shows that the
12 recording would unduly interfere with the examination.

13 (b) Waiver of privilege. By requesting and obtaining the examiner's report, the party
14 examined waives any privilege the party may have in that action or any other involving
15 the same controversy, regarding the testimony of every other person who has examined
16 or may thereafter examine the party about the same condition. **Question: Does this**
17 **paragraph fit with the model that expert reports must be disclosed? Seems like the**
18 **person examined necessarily waives the privilege.**

19 (c) Sanctions. If a party or a person in the custody or under the legal control of a
20 party fails to obey an order entered under paragraph (a), the court on motion may take
21 any action authorized by Rule 37(b)(2), except that the failure cannot be treated as
22 contempt of court.

23

1 **Rule 36. Request for admission.**

2 (a) Request for admission. A party may serve upon any other party a written request
3 to admit the truth of any discoverable matter set forth in the request, including the
4 genuineness of any document. The matter must relate to statements or opinions of fact
5 or of the application of law to fact. Each matter shall be separately stated. During initial
6 fact discovery, a party may not request admission of more than 25 matters. A copy of
7 the document shall be served with the request unless it has already been furnished or
8 made available for inspection and copying. The request shall notify the responding party
9 that the matters will be deemed admitted unless the party responds within 28 days after
10 service of the request.

11 (b) Answer or objection.

12 (b)(1) The matter is admitted unless, within 28 days after service of the request, the
13 responding party serves upon the requesting party a written answer or objection.

14 (b)(2) Unless the answering party objects to a matter, the party must admit or deny
15 the matter or state in detail the reasons why the party cannot truthfully admit or deny. A
16 party may identify the part of a matter which is true and deny the rest. A denial shall
17 fairly meet the substance of the request. Lack of information is not a reason for failure to
18 admit or deny unless the information known or reasonably available is insufficient to
19 form an admission or denial. If the truth of a matter is a genuine issue for trial, the
20 answering party may deny the matter or state the reasons for the failure to admit or
21 deny.

22 (b)(3) If the party objects to a matter, the party shall state the reasons for the
23 objection. Any reason not stated is waived unless excused by the court for good cause.
24 The party shall admit or deny any part of a matter that is not objectionable. It is not
25 grounds for objection that the truth of a matter is a genuine issue for trial.

26 (c) Sanctions for failure to admit. If a party fails to admit the truth of any discoverable
27 matter set forth in the request, and if the requesting party proves the truth of the matter,
28 the requesting party may move for an order requiring the other party to pay the
29 reasonable expenses of proving the matter, including reasonable attorney fees. The
30 court shall enter the order unless it finds that:

31 (c)(1) the request was held objectionable;

32 (c)(2) the admission sought was not substantially important;

33 (c)(3) the responding party had reason to believe the truth of the matter was a
34 genuine issue for trial; or

35 (c)(4) there were other good reasons for the failure to admit.

36 (d) Effect of admission. Any matter admitted under this rule is conclusively
37 established unless the court on motion permits withdrawal or amendment of the
38 admission. The court may permit withdrawal or amendment if the presentation of the
39 merits of the action will be promoted and withdrawal or amendment will not prejudice
40 the requesting party. Any admission under this rule is for the purpose of the pending
41 action only. It is not an admission for any other purpose, nor may it be used in any other
42 action.

43 Advisory Committee Notes

44

1 **Rule 37. Failure to make or cooperate in disclosure or discovery; sanctions.**

2 (a) Motion for order compelling disclosure or discovery.

3 (a)(1) Motion. A party may move to compel disclosure or discovery and for
4 appropriate sanctions if another party:

5 (a)(1)(A) makes an evasive, incomplete or insufficient disclosure or response to a
6 request for discovery;

7 (a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement
8 a disclosure or response or makes a supplemental disclosure or response without an
9 adequate explanation of why the additional or correct information was not previously
10 provided;

11 (a)(1)(C) objects to a request for discovery;

12 (a)(1)(D) impedes, delays, or frustrates the fair examination of a witness; or

13 (a)(1)(E) otherwise fails to make full and complete disclosure or discovery.

14 (a)(2) Appropriate court. A motion may be made to the court in which the action is
15 pending, or, on matters relating to a deposition, to the court in the district where the
16 deposition is being taken. A motion for an order to a nonparty witness shall be made to
17 the court in the district where the deposition is being taken.

18 (a)(3) The movant must attach a copy of the request for discovery or the response at
19 issue and a certification that the movant has in good faith conferred or attempted to
20 confer with the party not making the disclosure or discovery in an effort to secure the
21 disclosure or discovery without court action.

22 (a)(4) Expenses and sanctions.

23 (a)(4)(A) If the motion is granted, or if the disclosure or discovery is provided after
24 the motion was filed, the court shall, after opportunity for response, require the party or
25 witness whose conduct necessitated the motion or the party or attorney advising such
26 conduct or both of them to pay to the moving party the reasonable expenses incurred in
27 obtaining the order, including attorney fees, unless the court finds that the movant did
28 not make a good faith effort to obtain the disclosure or discovery without court action, or
29 that the nondisclosure, response, or objection was substantially justified, or that other
30 circumstances make an award of expenses unjust.

31 (a)(4)(B) If the motion is denied, the court may enter any protective order authorized
32 under Rule 26(c) and shall, after opportunity for response, require the moving party or
33 the attorney or both of them to pay to the party or witness who opposed the motion the
34 reasonable expenses incurred in opposing the motion, including attorney fees, unless
35 the court finds that the motion was substantially justified or that other circumstances
36 make an award of expenses unjust.

37 (a)(4)(C) If the motion is granted in part and denied in part, the court may enter any
38 protective order authorized under Rule 26(c) and may, after opportunity for response,
39 apportion the reasonable expenses incurred in relation to the motion among the parties
40 and persons in a just manner.

41 (b) Failure to comply with order.

42 (b)(1) Sanctions by court in district where deposition is taken. Failure to follow an
43 order of the court in the district in which the deposition is being taken is contempt of that
44 court.

45 (b)(2) Sanctions by court in which action is pending. Unless the court finds that the
46 failure was substantially justified, the court in which the action is pending may take such
47 action in regard to the failure to follow its orders as are just, including the following:

48 (b)(2)(A) deem the matter or any other designated facts to be established in
49 accordance with the claim of the party obtaining the order;

50 (b)(2)(B) prohibit the disobedient party from supporting or opposing designated
51 claims or defenses or from introducing designated matters into evidence;

52 (b)(2)(C) stay further proceedings until the order is obeyed;

53 (b)(2)(D) dismiss all or part of the action, strike all or part of the pleadings, or render
54 judgment by default on all or part of the action;

55 (b)(2)(E) order the party or the attorney to pay the reasonable expenses, including
56 attorney fees, caused by the failure;

57 (b)(2)(F) treat the failure to obey an order, other than an order to submit to a physical
58 or mental examination, as contempt of court; and

59 (b)(2)(G) instruct the jury regarding an adverse inference.

60 (c) Failure to preserve evidence. Nothing in this rule limits the inherent power of the
61 court to take any action authorized by paragraph (b)(2) if a party destroys, conceals,

62 alters, tampers with or fails to preserve a document, tangible item, electronic data or
63 other evidence in violation of a duty. Absent exceptional circumstances, a court may not
64 impose sanctions under these rules on a party for failing to provide electronically stored
65 information lost as a result of the routine, good-faith operation of an electronic
66 information system.

67 Advisory Committee Notes

68